

AT A REGULAR MEETING OF THE CULPEPER COUNTY BOARD OF SUPERVISORS HELD IN THE BOARD ROOM, LOCATED AT 302 N. MAIN STREET, ON WEDNESDAY, NOVEMBER 8, 2006.

Board Members Present: *John F. Coates, Chairman*
Steven E. Nixon, Vice-Chairman
Larry W. Aylor
William C. Chase, Jr.
Sue D. Hansohn
Brad C. Rosenberger
Steven L. Walker

Staff Present: Frank T. Bossio, County Administrator
J. David Maddox, County Attorney
John C. Egertson, Planning Director
Sam McLearen, Zoning Administrator
Peggy S. Crane, Deputy Clerk

CALL TO ORDER

Mr. Coates, Chairman, called the meeting to order at 7:00 pm.

CITIZEN FORUM

Mr. Coates opened the Citizen Forum and call for comments on any item that was not on the agenda.

Mr. D. R. Griffith, Stevensburg District, expressed his concern regarding the discrepancy on three drawings of record on the Bowen tract approved in October, which was misleading information in determining the size of that tract. He also expressed concern regarding the lack of plans for stormwater management and sediment and erosion control on that tract.

AGENDA ADDITIONS AND/OR DELETIONS

Mr. Nixon moved, seconded by Mrs. Hansohn, to approve the agenda as presented.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

PUBLIC HEARINGS

THE BOARD WILL RECEIVE PUBLIC COMMENTS AND CONSIDER ADOPTING A RESOLUTION SUPPORTING THE BRANDY STATION FOUNDATION TEA 21 GRANT APPLICATION

Mr. Edwin F. Gentry, representing the Brandy Station Foundation, recalled that the Foundation had submitted a TEA 21 grant last year that was rejected due to minor deficiencies. He said since that time, the Foundation had acquired the Golden Oaks property with approximately 33 acres at the base of Fleetwood Heights. He noted that the current application was for a small grant for pull-off, fencing, signage, and landscaping of the 34-acre parcel versus the grant submitted last year for the 14-acre parcel. He explained the grant would be a beginning to what would ultimately be an overall plan for trails and signage on the entire battlefield around Fleetwood Heights.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mr. Chase moved, seconded by Mr. Walker, to approve the resolution in support of the grant.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

THE BOARD WILL RECEIVE PUBLIC COMMENTS AND CONSIDER VACATING THE ROAD KNOWN AS CREATIVITY DRIVE IN THE CULPEPER COLONNADE SHOPPING CENTER

Mr. John C. Egertson, Planning Director, asked for the Board's consideration to vacate the road known as "Creativity Drive". He explained that Creativity Drive was built to State standards and dedicated as a public road during the development of the Montanus Trade Center, which was now part of the Target development in the Culpeper Colonnade Shopping Center. He said the road was never acquired by the State because there were insufficient businesses or users of the road. He pointed out that the Culpeper Colonnade development would surround that road, extend it to a new access point onto Route 15/29 Business, and maintain it as part of the shopping center. He said the only affected party, other than Regency Centers, was Schewel Furniture Store who had written a letter endorsing the concept. He stated all the necessary steps had been taken, the property had been posted for a period of 30 days, and the proper public notices had been publicized, and the order was ready for the Board's consideration.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mr. Chase moved, seconded by Mr. Aylor, to approve the vacation of Creativity Drive.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

THE BOARD OF WILL RECEIVE PUBLIC COMMENTS AND CONSIDER A PROPOSED ORDINANCE ARTICLE XV. TECHNOLOGY ZONES OF THE COUNTY CODE

Mr. Egertson asked the Board to consider a new ordinance entitled Article XV. Technology Zones, as well as the Technology Zone policy, as recommended by the Rules Committee. He said the policy would establish the criteria and the incentives for technology zones, such as the scoring for any entity proposing to receive these incentives based upon the number of jobs created, the salaries of those jobs, the investment in the property, and the size or square footage of the building being constructed. He said businesses would be scored based upon these factors and, depending upon the score received, could qualify for tax reimbursements of 20 percent, 40 percent, 60 percent or 80 percent for the three-year incentive period. He said that regardless of what percentage was achieved, there was a proposed cap of \$1 million, which could be waived by the Board of Supervisors. He explained that the reason the incentives and criteria were included in a policy statement, rather than in the ordinance, was to allow for future changes or adjustments with a minimal amount of effort.

Mr. Egertson explained that the ordinance would establish technology zones in four zones, with a requirement that the Entrance Corridor Overlay District or the Architectural Review criteria would be imposed on any business applying to receive benefits under this ordinance. He said the the four technology zones proposed in the ordinance and supported by the Comprehensive Plan were: (1) The Wingspread Technology Zone that incorporated the property known as Wingspread located on Lovers Lane, Route 522, and the railroad track; (2) the McDevitt Drive Technology Zone that incorporated the area around McDevitt Drive and the Germanna Tech Center property; (3) the Brandy Station Technology Zone that incorporated property with railroad frontage and some existing commercial zoning; and (4) the

Elkwood Technology Zone, that incorporated the area around the Airport, Airpark and Willow Run property.

Mr. Egertson stated that Mr. Sachs was unable to be present, but he would answer any questions.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mr. Chase moved, seconded by Mr. Walker, to approve the ordinance and policy.

Mr. Rosenberger asked whether there had been any discussion at the Committee level on reducing the point range relative to the cumulative score and taxes to be reimbursed. Mr. Walker replied that the grading was based on criteria that was developed in order to attract the types of investment the County was seeking, and the higher percentage of scoring provided a higher percentage of rebate to encourage new businesses. Mr. Nixon added that reducing the percentages had been discussed, but was not pursued because it was agreed that the purpose of the initiative was to encourage development in the technology zones.

Mr. Chase stated he could amend his motion to include the words "up to" the various percentages. Mr. Rosenberger stated that would not be necessary because he did not disagree that it was important to bring in industry and business to help offset taxes, but felt that the policy could be reviewed at a later date since it was separate from the ordinance itself. He said he would support the motion.

Mr. Walker agreed that if the grading and criteria became a burden to the County, the Board could change the policy while keeping the ordinance intact.

Mr. Maddox pointed out that the policy had been amended to place a \$1 million cap on the total amount; and the County had multiple tax incentive programs, but under this policy and ordinance, a business or industry would have to select a particular program and not combine programs to achieve additional benefits.

Mr. Aylor called attention to the fact that the program was an incentive to attract businesses and was based on the number of jobs created, the salaries of those jobs, the investment in the property, and the size of facility. He said he would support the motion because of the investment in the community and the long-term benefits that would result.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

UNFINISHED PLANNING COMMISSION BUSINESS

THREE FLAGS/CULPEPER LLC. 464 LOT SUBDIVISION. Request by Three Flags/Culpeper LLC for approval of a 464-lot subdivision known as Three Flags, Phase Two. The property is located on Route 29 and Route 299 in the Cedar Mountain Magisterial District and Phase Two contains approximately 258 acres. Tax Map/Parcel Nos. 50/4, 5.

Mr. Egertson recalled that the case had been postponed last month in order to obtain additional information. He displayed a map that highlighted the location of the property, and indicated that the request was for Phase Two of Three Flags. He stated that Phase One had been approved for 231 lots and was under construction, and Phase Two would contain an additional 463 lots for single-family development and one additional lot that would be subject to future approvals for potential multifamily development. He explained that Phase Two had been separated into seven sections, and each phase would be subject to final engineering/planning and plat recordation one at a time as they were phased in, and each phase would have to be stabilized in terms of land disturbance before the developer could move to the next phase. He felt this plan would far exceed the effectiveness of the Phase One plan and avoid the difficulties encountered during that phase. He said that the Phase Two plan had received the approvals of the reviewing agencies: The Soil and Water Conservation District approved the preliminary erosion control and stormwater plans and would review the final plans as they were received; the Town of Culpeper approved the plan with regard to the water and sewer proposals; and VDOT approved the road and access scheme for the subdivision.

Mr. Egertson reported there were two specific issues discussed at length last month, and the first one dealt with the potential connection through Three Flags into Clair Manor Drive in the Clairmont Manor Subdivision. He said the potential solution to make that connection more acceptable to the residents of Clairmont was to provide the road as an emergency access only. He displayed a drawing considered last month showing the location where a hammerhead turnaround would be created with a small space between the end of Clair Manor Drive and the emergency access. The only change to the drawing since last month was that the area between the end of the hammerhead and Clair Manor Drive would be reinforced with "grasscrete" or similar product to resemble grass that would support emergency vehicles should the need occur. He stated that this proposed resolution had been supported by the Planning Commission.

Mr. Egertson explained that the other issue was the primary reason the request was postponed last month was with regard to the adjacent Cedarbrooke Subdivision; specifically, that the stormwater management ponds proposed for Three Flags were in close proximity to Cedarbrooke. He said the issue was that the outfall of that stormwater management pond ran directly into a lake in Cedarbrooke, and there were concerns for the protection of that lake. He stated that the outcome of the last 30 days of review and study was agreement that the pond could have a discoloration effect on the Cedarbrooke lake and there would be a sedimentation issue. He said the proposal had been revised so that the stormwater management pond would now flow through a pipe, around the Cedarbrooke lake entirely on the Three Flags property, and ultimately discharge into Gaines Run downstream of the Cedarbrooke lake. He noted that the proposal had been reviewed by the Soil and Water Conservation District, and all parties agreed it should resolve the pond problem.

Mr. Egertson reported that during discussions, residents of Cedarbrooke requested that the buffer between Three Flags and Cedarbrooke be increased or improved. He stated that had been accomplished by the developer's proposing some substantial landscaping all along that buffer since it was narrower than the 200-foot buffer between Three Flags and Clairmont.

Mr. Egertson stated he would like to clarify a misstatement he made at last month's meeting. He explained that the stormwater ponds in the Three Flags development were wet ponds so they would have water in them. He noted the ponds would be attractive, fairly large, and should be a benefit to the Cedarbrooke residents as well because they would resemble lakes with wetlands plantings around them.

Mr. Egertson stated that the issues raised last month had been resolved, and the plan was ready for the Board's consideration.

Mr. Tom Davis, JCE, Inc., informed the Board that as manager of the development of Three Flags, he had made a sincere effort to work with County staff to make modifications to the plan to address concerns raised at the public hearing, and he would appreciate receiving the Board's approval.

Mr. Walker thanked Mr. Davis for his efforts and in meeting with the citizens and County staff. He asked Mr. Davis if he had an anticipated time frame to begin construction on the second phase of Three Flags. Mr. Davis replied that he did not have a schedule at

the present time, but anticipated construction would begin in early 2008, depending upon the housing market.

Mr. Coates opened the public hearing and called for public comments.

Mr. Jim Gearing, Cedarbrooke Subdivision, Cedar Mountain District, stated he was the owner of Westco Builders, as well as the owner of Lot 37 in Cedarbrooke. He said his lake was the one directly affected by the proposed sediment retention pond in Three Flags. He thanked the Board for providing the opportunity to have additional time to work with County staff, the owners of JCE, and residents of Cedarbrooke to resolve these issues.

Ms. Gail Higgins, Cedar Mountain District, Cedarbrooke Subdivision, thanked the same people Mr. Gearing had thanked, as well as the Board of Supervisors for its interest and concern. She said the Cedarbrooke residents met with Mr. Aylor, the developer, and the engineers of the Three Flags property to address their concerns regarding the stormwater ponds and for offering the landscaping plan for the buffer between that development and Cedarbrooke. She stated that the Cedarbrooke residents were still concerned about the location and style of the water tower, and asked that consideration be given to moving it to another location, not on Three Flags. She asked all the other Cedarbrooke homeowners in attendance to stand.

Ms. Pat Ballard, a Co-Director of the Clairmont Manor Homeowners Association, thanked the Board for addressing the issues raised by their residents. She stated that the Homeowners Association would respectfully ask for approval of the amended road as shown on the revised drawing as an acceptable alternative to having a cut-through street between Three Flags Phase Two and Clairmont Manor. She asked that the residents from Clairmont Manor stand in support of the amendment.

With no further comments, Mr. Coates closed the public hearing.

Mr. Aylor moved, seconded by Mr. Chase, to approve the application as submitted recommended by the Planning Commission and staff.

Mr. Aylor thanked Mr. Gearing, Mr. and Mrs. Higgins, and all his neighbors in Clairmont Manor and Cedarbrooke for their involvement in this process. He also thanked the developer and engineers for working with them in finding a common ground.

Mr. Coates stated that he would not oppose the application, but he was concerned that the street would be closed since it was part of the County's transportation plan that

included a connection between the two subdivisions and ultimately to White Shop Road. He pointed out that the connection from Clairmont Drive to Three Flags could be reopened in the future should it become necessary.

Mr. Walker said he assumed that Mr. Aylor's motion included the two amendments, as well as the recommendation from the Planning Commission. Mr. Aylor indicated agreement.

Mr. Walker asked whether the SWCD's blueprint for regional and soil conservation would be addressed as the various phases of the project moved forward. Mr. Egertson stated that he believed they would be considered. He said staff was utilizing grant money to work on creating a new stormwater management ordinance that would mesh with changes in stormwater regulations at the State level. He said that if a year from now the County had a new stormwater management ordinance, the final plans for this development, section-by-section, would be subject to the ordinance in effect at that time.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

Mr. Coates recessed the meeting at 7:38 p.m.

Mr. Coates called the meeting back to order at 7:39 p.m.

NEW PLANNING COMMISSION BUSINESS

ARMSTRONG FAMILY FARM, LLC – 3 LOT SUBDIVISION. Request by Armstrong Family Farm, LLC, for approval of a 3-lot subdivision. The property is located off Route 666 in the Stevensburg Magisterial District and contains 4.658 acres. Tax Map/Parcel No. 41/111.

Mr. McLearen informed the Board that the Planning Commission had considered the case and a public hearing was held. The Planning Commission found this application to be consistent with the Zoning and Subdivision Ordinances. He said the Planning Commission was recommending to the Board of Supervisors that the subdivision request be approved.

Mr. Egertson displayed a copy of preliminary plan highlighting the location of the Armstrong property under consideration. He said the area affected was currently zoned Commercial Services (CS) as a result of a recent rezoning. He indicated that the parcel was directly behind a small warehouse building owned by Schewel Furniture and was

being proposed for subdivision into three lots that would front on a proposed road State-maintained road as proffered in the subdivision application. He said the Health Department, VDOT and the Soil and Water Conservation Department had approved the application, and it was ready for the Board's consideration. He noted that a site plan for some businesses on the property was pending before the Planning Commission.

Mr. Nixon asked whether warehouses and/or office buildings were anticipated since the parcel was zoned CS. Mr. Egertson replied that there was a business that proposed an office-warehouse use on one of the properties, and another one would include some retail sales. Mr. Nixon asked whether the uses were appropriate for this location and the surrounding properties. Mr. Egertson assured him that they were appropriate.

Mr. Bruce Clark, attorney representing the application, informed the Board that he had no additional comments, but he would be glad to answer any questions.

Mr. Coates opened the public hearing and called for public comments.

There were none, and Mr. Coates closed the public hearing.

Mr. Chase moved, seconded by Mr. Aylor, to approve the request for as recommended by the Planning Commission.

Mr. Coates called for voice vote.

Ayes - Aylor, Chase, Coates, Hansohn, Nixon, Rosenberger, Walker

Motion carried 7 to 0.

AMENDMENT TO ARTICLE 7.1 OF THE ZONING ORDINANCE (APPENDIX A OF THE CULPEPER COUNTY CODE) AND AMENDMENTS TO APPENDIX C, REPEALED DISTRICTS, ARTICLES 7 AND 8.

The Board of Supervisors will consider proposed text amendments to Appendix A and Appendix C of the County Code which would alter the "grandfathering" provisions for and uses allowable in the M-1 (Light Industrial) and M-2 (Heavy Industrial) Zoning Districts. The text amendments being considered would exclude all residential uses which were previously permitted uses in the M-1 and M-2 zoning districts. No changes to allowable industrial and commercial uses are proposed.

Mr. McLearen informed the Board that this amendment of the Zoning Ordinance and Amendments to Appendix C, Repealed Districts, Articles 7 and 8, were considered by the Planning Commission and a public hearing was held. The Planning Commission found these amendments to be appropriate and supportive of the Comprehensive Plan and would apply throughout the County. He said the Planning Commission was

recommending to the Board of Supervisors that the Amendment to Article 7.1 of the Zoning Ordinance (Appendix A of the Culpeper County Code) and Amendments to Appendix C, Repealed Districts, Articles 7 and 8 be adopted.

Mr. Egertson recalled that in November 1991, the County adopted Industrial Zoning Districts L-I (Article 7A.1) and H-I (Article 8A.1) to replace the M-1 and M-2 zoning districts. He said that although the M-1 and M-2 zones were repealed at that time, they were retained in Appendix C of the County Code as “grandfathered” districts as properties already zoned M-1 or M-2. He explained the primary difference between the L-I and H-I zones and the M-1 and M-2 zones was that the L-I and H-I were limited to industrial use that did not pyramid and, as such, commercial uses and residential uses were not allowed; the M-1 and M-2 districts allow both commercial and residential uses. He indicated that under the amendments being proposed, all residential uses would be prohibited in the M-1 and M-2 zoning districts, and the commercial uses would not be impacted.

Mr. Egertson stated that if the proposed amendments were adopted, all parcels throughout the County zoned M-1 or M-2 would be impacted: 95 parcels currently zoned M-1 and 167 parcels currently zoned M-2. He estimated there were approximately 1,000 acres of M-1 property and approximately 1,350 acres of M-2 property. He explained that the acreages were estimates because many of the parcels affected were split-zoned and no exact breakdown was available.

Mr. Egertson stated that the 2005 Comprehensive Plan designated the vast majority of the parcels affected for industrial or commercial use on the future land use map. He said that industrial uses were not generally compatible in close proximity to residential uses and to continue to allow both uses in a single zoning district would be in direct conflict with the Comprehensive Plan and good planning practices. In addition, industries preferred not to locate directly adjacent to residential areas from an economic development standpoint.

Mr. Egertson explained that with regard to the grandfathering of nonconforming use status of some existing residential uses in the M-1 and M-2 zones, there were 46 properties zoned either M-1 or M-2 with single-family residential uses. He said there are 11 homes in the M-1 district which would, under this change, become legal nonconforming uses governed by Article 12 of the Zoning Ordinance. Under Article 12, a nonconforming dwelling can be replaced in-kind, even if destroyed 100 percent; but, a nonconforming

dwelling cannot be enlarged or expanded. He said there were 35 existing single-family dwellings in the M-2 zone, which were already nonconforming uses and would not be impacted by the changes currently proposed, except they could not be converted into multifamily dwellings.

Mr. Egertson stated that the County had experienced rapid growth over the last several years, especially residential, but the amount of residential growth in the M-1 and M-2 zones had been minimal. He said this fact would indicate that (1) the M-1 and M-2 zoned areas of the County were not the most desirable for residential growth, and (2) this would be the appropriate time to make this change in order to preserve the land best suited for industrial and commercial use and reconcile the overly broad permitted uses in the M-1 and M-2 zones in the Comprehensive Plan. He noted that there had been a suggestion that perhaps this could be compromised by requiring a use permit instead of prohibiting residential use in these zones and, although that may be a legal alternative, the staff would suggest that requiring a rezoning would be a better alternative. He stated that the process of rezoning versus issuing a use permit was exactly the same and both were legislative actions requiring two public hearings. He also stated that use permits under County code required Comprehensive Plan compliance and that criteria could not be met in the vast majority of cases. He said that rezoning created the opportunity for the owner/developer to offer voluntary proffers, while the use permit process created the opportunity for the Board of Supervisors to impose reasonable, but involuntary, conditions.

Mr. Egertson reviewed maps of the property affected: An overall map showing the Town, with M-1 areas along the 29 corridor; an area south of the Town along Lovers Lane area, with substantial M-1 zoning, and the Germanna Technology Center; the area running from Inlet to Brandy Station and out to Elkwood with spotted industrial zones; and a Light Industrial zone on Route 29 south of Town at the corner of Routes 29 and 603. He also reviewed an overall map of M-2 zoning, with an area primarily to the east of the Town, the Culpeper Business and Industrial Park where Regency Centers was developing Culpeper Colonnade, the Route 15/29 business corridor from the Town limits to Inlet, and the Culpeper County Airpark; and a map indicating spot zonings along Route 615 with quarry locations. He stated that none of these areas were appropriate for residential and all of them, with a few exceptions, were identified in the Comprehensive Plan as being areas planned for industrial.

Mr. Egertson emphasized that the submission was a comprehensive amendment and would be applicable to every parcel of M-1 and M-2 zoning, and proposal was ready for the Board's consideration.

Mr. Coates opened the public hearing and called for public comments.

Mr. Fred Payne, an attorney from Charlottesville representing DALRO Properties, better known as the Canavan family presented the Board with a copy of a print-off from the County GIS map which showed other surrounding zones in addition to M-1 and M-2. He said he would discuss three points included in his letter to the Board:

1. The need for the proposed changes was questionable because industrial and residential were compatible, especially in regard to the Canavan property and indicated several mixed-use areas on and around the Canavan property zoned M-2, M-1, and R-1 that would remain mixed-use.
2. Culpeper County consisted of 243,000 acres and only 150 to 200 acres of M-1 and 300 acres of M-2 would be impacted, which was less than .2 of one percent – a small issue for the County, but a large issue for the Canavan family.
3. The proposed changes would have a dramatic effect on the value of the Canavan's land based on empirical evidence

Mr. Payne said the Canavans owned between 20 to 27 percent of the M-1 land and almost half of the M-2. He pointed out that the Canavans were long-time public-spirited citizens in the County, and he felt it neither wise nor fair for the Board to ask them to sacrifice their property rights for a change that was basically unimportant to the County because it was so small.

Mr. Aaron Greso, West Fairfax District, stated the only value he could see in a mixed use application was that a business could have living quarters within the facility, but when there was an option to build houses, people had the tendency to build mass quantities of houses. He said he would like to see a business license associated with the various uses.

Mr. Dan Painter of Dewberry stated he had been working with the Canavan family for over three years, first with David Canavan for approximately two and a half years and then with Bill Canavan, his son, who had taken over the process of developing the property as his father envisioned. He pointed out that the Canavans have provided playing fields for the youth of the County for many years. He said that the Canavans had provided

a number of different concept plans for a residential component and every one had included playing fields to remain onsite. He noted that every concept plan had been brought to the County's Planning staff and had been reviewed and revised to include their comments and suggestions; and there were now two sketch plans in the Planning Department being reviewed for development of the property for residential use. He noted that the Canavans wanted to provide work force housing to accommodate new teachers coming to work at the new high school and for employees at the National Archives film center. He said that if the Canavans wanted to do a residential development after the amendments had been approved, it would require a rezoning application that would carry proffers and, as a result, raise the unit price of every residential unit. He pointed out also that the impact of residences next to industrial property could be lessened with setbacks and buffers and the location of the Canavan property at the Routes 29/666 intersection was an ideal location for a mixed use development.

Ms. Linda Walker stated she was expressing concern for her mother who lived on Brandy Road, formerly Inlet Road. She said she was in opposition to being "grandfathered" and not in alignment with the Comprehensive Plan. She also said she did not wish to be branded as "nonconforming". She asked the Board to give consideration to changing the Comprehensive Plan and continue to allow mixed use communities.

Ms. Karen Tammy Smith, accompanied by her daughter, stated that she considered being nonconforming was undesirable. She felt that their homes were being taken away after working so hard to acquire them. She asked that the Board to consider the residents before taking the proposed action.

Ms. Monique Smith, resident of Inlet, stated she had lived in her home on Brandy Road all of her life and that residents were there before the businesses, but after the businesses arrived, the residents and businesses cohabitated successfully. She expressed her concern that changes would affect the value of her home without lowering taxes, and she urged the Board to reconsider approving the proposed changes.

Mr. Bill Canavan, Cedar Mountain District, stated that his father purchased land in Culpeper 36 years ago and located his business, Moore Golf, Inc., on that property. He said his father opened his land for the community to use, and the fields had been an asset to the community's Little League sports teams. He noted that the County had just built a new sports complex and, if not for David Canavan, the taxpayers would have incurred this

expense much sooner. He pointed out that their land was open space, with the exception of a few farm buildings, and his family had been paying higher taxes for the M-1 and M-2 zoning, as opposed to A-1 or RA, and would like to exercise their rights within the current zoning. He related the many volunteer activities his mother had been involved in to help the community, and said she would be impacted the most by the proposed change. He asked that the Board vote against the proposed text amendment which would have minimal impact on the majority of M-1 and M-2 properties, but affected the Canavan property most severely.

Mr. Lee, a retired Admiral from the United States Navy and husband of Rose Bente Lee, stated he and his wife owned the tract immediately adjacent to Germanna Technical College had been instrumental in helping Germanna build that new facility. He expressed his appreciation for the Culpeper area and reminded the Board of the many contributions his wife had made to the community. He said they had fully supported everything Culpeper was doing, but they objected to eliminating the mixed use zones. He urged the Board to retain the current zoning.

Mr. John Fortenos spoke in support of the Canavans and their proposed development. He said he was a high school wrestling coach, had been active in youth sports, and knew of the lack of affordable housing for teachers. He said the Canavan development would provide affordable housing and continue to provide playing fields for youth within walking distance of their homes. He asked that the Board reconsider its proposal.

Mr. Mike Scott, Great Falls, Virginia, related in detail his involvement in mixed use communities in Northern Virginia. He said he had been working with the Lees on the development of their property adjacent to the Germanna Tech Center that would have professional, medical and technical facilities, with a small portion of residential to complement the business uses being contemplated. He stated that the proposed changes to eliminate mixed use development would have a significant detrimental impact on the Lees.

Mr. Mark Moorstein, Warrenton attorney, stated he would comment more on the policy issues rather than the legal issues involved. He cited the deprivation of values as a major issue. He said the M-1 zone was one of the few areas that would allow multifamily housing, and if they were eliminated, the County would end up creating affordability and

exclusionary problems. He asked the Board to consider the individual level versus the collective level, due to the loss of value for the individual. He suggested there could be a commensurate offsetting ability to create a zone that would allow people who had lost that value to regain it, and he urged that be given additional consideration.

Mr. James Ott, resident of Inlet, asked whether the County had any immediate plans for sewer service to that area and whether the State had any immediate plans for transportation.

Mr. Butch Davies of Davies, Barrell, Wills, Llewellyn and Edwards called attention to recent very positive actions the Board had taken by adopting a technology overlay district, the Entrance Corridor Overlay District, a landscaping and lighting ordinance, and working on utilities for the County. He expressed his concern that the Board would be reversing all of these positive steps by adopting a punitive approach to bring conformance with the Comprehensive Plan. He said that the proposed amendment would have a negative impact on a predominately residential Route 29 corridor that had been an active mixed use part of the community for decades; on the Canavans who had given significant time and property for recreation facilities; and on the Lees who had made significant donations to the County and whose property was ideally suited for mixed use. He asked the Board not to shift from its positive approach for the community to a negative one by minimizing and devaluating property values and negatively impacting potential mixed use communities that could help to revitalize and reenergize the eastern side of the northern part of our community.

Mr. Michael Armm, Salem District, stated he was representing Lee Sammis Associates, whose ownership entities had M-1 and M-2 properties in the County. He said he disagreed that industrial and residential did not mix and noted that mixed use projects were receiving awards throughout the country for combining light industrial, retail/commercial, and residential development. He pointed out that mixed use projects avoided issues such as transportation problems and supply of utilities; that existing M-1 and M-2 industrial properties could support residential with conditional uses that limited the size or percentage of the property that would be developed into residential use by requiring they be served by centralized utilities services; and a master plan indicating how mixed uses could work together. He said he also disagreed that requests for a use permit and a rezoning went through the same process; a conditional use permit required a long

checklist of requirements before approval could be granted and there was no guarantee that a rezoning application would be approved. He asked the Board to continue to allow residential use in the M-1 and M-2 zones with tight controls.

Mr. Bruce Clark stated he was not representing any of the landowners present, but was speaking because of his deep concern regarding the change in the policy. He said that the individuals who had spoken had paid their taxes and complied with the rules established by their government and expected consistency from their government to support them. He asked the Board to listen carefully to the individuals who had spoken and expressed their concerns.

With no further comments, Mr. Coates closed the public hearing.

Mr. Chase stated that he had been raised in a mixed use community, and mixed use did work among industries, businesses and residents. He also stated that he learned when he was studying planning that government should not interfere with people's vested rights. He said he would not support the proposed amendments because they would harm a lot of individuals.

Mrs. Hansohn asked Mr. Egertson to address the concern of some of the individuals affected that they could not rebuild their homes if they burned down. Mr. Egertson explained that there were 35 existing single-family homes in the M-2 zone which had never allowed single-family dwellings and had "legal nonconforming" status, and that situation was not changing. He said that if a house burned down, it could be rebuilt in-kind, but could not be enlarged. He added that property owners in M-2 zone could sell their homes because the grandfathered legal nonconforming status ran with the land, and not with the owner. He further explained that the 11 properties in the M-1 were allowed to have single-family dwellings, were a legal use, and that status would change if the amendments passed.

Mrs. Hansohn asked about the status of Brandy Road in the transportation plan. Mr. Egertson replied that the first segment of the road from Town to Route 666 would be under construction in the near future, but the part from that point to Inlet was unfunded and would be more than six years before it could be accomplished.

Mr. Rosenberger stated he appreciated the comments made by the individuals who spoke, but he had not heard anyone address the real issue of public health, safety and

welfare. He said because of that issue, good planning practices would not allow residential and industrial in close proximity.

Mr. Chase reiterated that he would not support the changes because he did not want to interfere with people's vested rights.

Mr. Nixon agreed with Mr. Chase. He said the County government made a promise to the affected citizens in 1991 for grandfathered residential use, and those uses were now being reversed. He said he would not support a motion to move forward if such a motion were made.

Mr. Chase moved, seconded by Mr. Nixon, to deny the proposed amendments.

Mr. Maddox stated that the term "vested rights" had been made several times, and he was not clear in what sense that was being used. He said the Virginia Supreme Court referred to vested rights only in terms of a statute enacted by the General Assembly several years ago, and vested rights was a technical legal term in Virginia law.

Mr. Chase stated that when he was referring to vested rights, he intended it to mean that government should not interfere with properties that had grandfather clauses because he felt they were legally binding.

Mr. Rosenberger stated that a sitting Board could not decide what a future Board may or may not do because the current Board could not lock any action into perpetuity. Mr. Chase agreed that any decision of the Board could be changed, but he was concerned regarding the people living today.

Mr. Coates stated that he appreciated Mr. Chase's comments, but he could not support the motion. He agreed that the proposed changes would affect some people, but the amendments had been studied by the Planning Commission and recommended for approval.

Mr. Aylor stated he would not support the motion because as a Board member, he was charged with doing what was best for the majority of the community and agreed with Mr. Rosenberger that the real issue was to protect public health, welfare and safety.

Mr. Chase pointed out that he had never received any calls from constituents regarding problems with industries in close proximity to their homes and asked for an example of when mixed use did not work. Mrs. Hansohn offered an example of a case recently before the Planning Commission where a business in a residential neighborhood wanted to expand its operations, but due to such a public outcry from the residents, the

business withdrew its application.

Mr. Coates called for voice vote and a show of hands.

Ayes - Chase, Nixon

Nays - Aylor, Coates, Hansohn, Rosenberger, Walker

Motion failed 5 to 2.

Mr. Rosenberger moved, seconded by Mr. Aylor, to accept the Planning Commission's recommendation as it was in the best interest of the public health, safety and welfare of future citizens.

Mr. Coates called for voice vote and a show of hands.

Ayes - Aylor, Coates, Hansohn, Rosenberger, Walker

Nays - Chase, Nixon

Motion carried 5 to 2.

Mr. Coates thanked the individuals who attended and/or spoke and said he appreciated their attendance and comments..

ADJOURNMENT

Mrs. Hansohn moved to adjourn at 8:58 p.m., and Mr. Coates declared the meeting adjourned.

Peggy S. Crane, CMC
Deputy Clerk

John F. Coates, Chairman

Frank T. Bossio,
Clerk to the Board

APPROVED: December 5, 2006